

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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DERRICK MORGAN,

Plaintiff,

v.

**DECISION AND ORDER**

T. BUCHINGER,

05-CV-192S(F)

Defendant.

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1. Plaintiff commenced this civil rights action *pro se* on March 21, 2005. Defendant moved for summary judgment on February 12, 2007. (Docket No. 25).

2. The Court referred this matter to the Honorable Leslie G. Foschio, United States Magistrate Judge, to hear and report upon dispositive motions and issue a Report and Recommendation for the consideration of the District Judge pursuant to 28 U.S.C. § 636(b)(1)(B).

3. In a Report and Recommendation dated August 10, 2007, Judge Foschio recommended that Defendant's motion for summary judgment be granted.

4. On September 13, 2007, Plaintiff timely filed Objections to Judge Foschio's Report and Recommendation in accordance with 28 U.S.C. § 636(b)(1)(C) and Local Rule 72.3(a)(3).

5. The Court has thoroughly reviewed this case *de novo* and has considered Judge Foschio's Report and Recommendation, Plaintiff's Objections thereto and the applicable law. Upon due consideration, this Court will accept Judge Foschio's

recommendation and grant Defendant's motion for summary judgment for the reasons stated in the Report and Recommendation. Plaintiff's Objections are therefore denied.

6. In particular, the Objections are based on Plaintiff's assertion that Judge Foschio failed to take into account Plaintiff's plea of "not guilty" to the charges alleged in the challenged misbehavior report. Judge Foschio expressly noted Plaintiff's "not guilty" plea at page 2 of the Report and Recommendation, and later observed that Plaintiff did not deny the charged conduct in his opposition to Defendant's summary judgment motion. In short, Judge Foschio did not "completely omit[ ] pertinent facts concerning the evident [sic] at the disciplinary hearing." (Docket No. 39 at 2.) The stated facts are consistent with the record in this case.

IT HEREBY IS ORDERED, that this Court accepts Judge Foschio's August 10, 2007 Report and Recommendation (Docket No. 36) in its entirety, including the authorities cited and the reasons given therein, and Defendant's Motion for Summary Judgment (Docket No. 25) is GRANTED.

FURTHER, that Plaintiff's Objections (Docket No. 39) are DENIED.

FURTHER, that the Clerk of the Court is directed to close this case.

SO ORDERED.

Dated: September 23, 2007  
Buffalo, New York

/s/William M. Skretny  
WILLIAM M. SKRETNY  
United States District Judge